

## No. 99-1825

Before McMILLIAN, LOKEN, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

PER CURIAM.

Welch Industries, Inc. (Welch), appeals from the judgment as a matter of law (JAML) entered in the District Court<sup>1</sup> for the Eastern District of Arkansas for PPG Industries, Inc. (PPG), following a jury trial on Welch's conversion counterclaim in this diversity action. After de novo review, see Salve Regina College v. Russell, 499 U.S. 225, 231 (1991) (district court's interpretation of state law); Hawkins v. City of Farmington, 189 F.3d 695, 700-01 (8th Cir. 1999) (grant of JAML), we conclude the district court properly granted JAML for PPG because Welch's evidence concerning its damages was speculative. See Marine Servs. Unlimited, Inc. v. Rakes, 918 S.W.2d 132, 136-37 (Ark. 1996) (burden of proving damages rests on party claiming them, and proof must consist of facts, not speculation); Dent v. Wright, 909 S.W.2d 302, 306 (Ark. 1995) (proper measure of damages in conversion action is market value of property at time and place of conversion); Orsini v. Larry Moyer Trucking, Inc., 833 S.W.2d 366, 368 (Ark. 1992) ("The long established rule of law in Arkansas is that damages will not be allowed where they are speculative, based on conjectural evidence or the opinions of the parties or witnesses."). Accordingly, we affirm. See 8th Cir. R. 47B.

MORRIS SHEPPARD ARNOLD, Circuit Judge, dissenting.

I dissent.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

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<sup>1</sup>The Honorable George Howard, Jr., United States District Judge for the Eastern District of Arkansas.